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Opinion No. 56-140

REQUESTED BY: Arizona Corporation Commission
Securities Division

OPINION BY: ROBERT MORRISON, The Attorney General
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QUESTION: Do the words "within or from this state", contained in A.R.S. § 44-1841, mean that a corporation must register an issue of its stock that is to be offered and sold outside of the State of Arizona merely because it is an Arizona corporation, even though it has no assets within this state, no officers, office or connection with the State of Arizona other than having a statutory agent?

CONCLUSION: No.

The purpose behind the Securities Act of the State of Arizona, or the Securities Act of any other state is to protect the citizens of the particular state from being induced to buy securities because of undisclosed, misleading or fraudulent information, to prevent the promotion and sale of fraudulent securities and to otherwise protect investors of that particular state. A.R.S. § 44-1841 must be construed in the light of this purpose. This statute provides:

"§ 44-1841. Sale of unregistered securities prohibited

A. It is unlawful to sell or offer for sale within or from this state any securities unless such securities have been registered. . . "
(Emphasis supplied)

The question is whether the words "from this state" were intended to include securities issued by a corporation organized under the laws of the State of Arizona, even though that particular corporation had no other connection with this state and the securities were not to be offered to citizens of this state. This could possibly be the interpretation of the words in question, but how would this protect the citizens of this state? The securities

would not be offered to citizens of Arizona; therefore, the registration of these securities would in no way protect Arizona investors. It would, therefore, appear that this was not the intended purpose of the words "from this state".

There is only one other reason these words are in A.R.S. § 44-1841 and that is to prevent the setting up of a base of operations within this state and the selling and offering for sale of securities to people outside the State of Arizona from within this state. These very words are mentioned in the case of Stevens v. Wrigley Pharmaceutical Co., 154 Atl. 403. In that case the statute applicable at the time of the alleged offense provided, in effect, that it was unlawful to sell unregistered securities "within the state" and there was no mention of the selling or offering for sale of securities "from the state". The defendant, a Delaware corporation, offered its stock for sale only to non-residents outside the State of New Jersey but it did this from a base of operations within the state. The Court held that this was not an offense under the existing statute because it was not an offer to sell or a sale "within the state". The Court went on to mention that the New Jersey Legislature sought to remedy this situation and had amended the statute to provide that it was illegal to sell or offer for sale unregistered securities "within or from this state".

"The object of the act, as expressed in the title and in the body of the act, was to prevent the sale of the denounced stock within this state, and the purpose was the protection of the citizens of this state. The provision of the act declaring as unlawful, inter alia, 'promoting,' merely prescribes one of the steps in the sale of stock within this state, and is not referable to sales of fraudulent stock made outside the state.

"That apparently was the conception of the Legislature for it later (P. L. 1930, p. 250, Comp. St. Supp. § *186--10a (2) et seq.) amended the statute (without amending the title) placing a ban on the sale of fraudulent stock within 'or from this State,' not so much to protect the citizens of other states, as to prevent this state from being used as a base of operations for crooks marauding outside the state."

It is, therefore, the opinion of this office that the words

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"within or from this state" in A.R.S. § 44-1841 encompass the sale or offer for sale of unregistered securities within this state, and also the offering and selling of unregistered securities to purchasers without the state through a base of operations within this state, and do not require the registration of an issue of stock by a corporation organized under the laws of Arizona merely because it is an Arizona corporation.

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